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on July 28, 2004

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07/28/04
Date of
Signature

PATENT

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

Customer No.: 000201
Attorney Docket No.: J3511(C)
Appellants: Landa et al.
Serial No.: 09/764,829
Filed: January 17, 2001
For: Antimicrobial Antiperspirant Products
UNUS No.: Y2-0119-UNI

Group: 1616
Examiner: A. Pryor
Edgewater, New Jersey 07020
July 28, 2004

BRIEF FOR APPELLANTS

Commissioner for Patents
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Sir:

Enclosed herewith are three (3) copies of an Appeal Brief for Appellants.

Please charge the \$330.00 fee to our Deposit Account No. 12-1155. Any deficiency or overpayment should be charged or credited to this Deposit Account. This authorization is submitted in triplicate.

Respectfully submitted,

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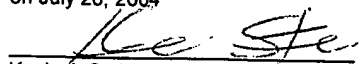
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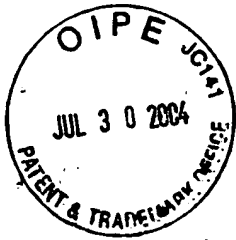
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Edgewater, New Jersey 07020
July 28, 2004

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TABLE OF CONTENTS

I. Real Party In Interest.....	3
II. Related Appeals and Interferences.....	4
III. Status of Claims.....	5
IV. Status of Amendments.....	6
V. Summary of the Invention.....	7
VI. Issues for Appeal.....	8
VII. Grouping of Claims.....	9
VIII. Appellant's Arguments.....	10
IX. Conclusion.....	11
X. Appendix.....	13

I. REAL PARTY IN INTEREST

The real party in interest is Unilever Home and Personal Care USA, Division of CONOPCO, Inc., a corporation of New York having a principal place of business at 33 Benedict Place, Greenwich, Connecticut 06830.

II. RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

III. STATUS OF CLAIMS

Claims 2, 3, 5-10 and 12-24 are currently pending. Claims 1, 4 and 11 were cancelled during prosecution. All of currently pending claims 2, 3, 5-10 and 12-24 have been finally rejected and are on appeal.

IV. STATUS OF AMENDMENTS

All amendments presented prior to the Final Rejection dated January 28, 2004 were entered. No amendments were submitted after the Final Rejection dated January 28, 2004.

V. SUMMARY OF THE INVENTION

The present invention is directed to a simple product comprising an AP active and a 'micro-molar active iron (III) chelator'. Micro-molar active iron (III) chelators are defined in the specification as chelators that "are able to significantly inhibit the growth of a relevant micro-organism when present, in a medium containing said micro-organism, at a concentration of 3×10^{-6} mol.dm⁻³ or less" wherein "inhibition is consider significant when growth of the relevant micro-organism on a supporting medium can be reduced by at least 30%" (see page 8, lines 19 to page 9, line 2 of the specification). Applicant has found that particular chelators (i.e. those which are micro-molar active) give an unexpectedly anti-microbial effect in an antiperspirant composition.

VI. ISSUE FOR APPEAL

The Issue that remains in the case is defined by the Examiner's rejection and is as follows:

- I. Whether claims 2, 3, 5-10 and 12-24 are obvious under 35 U.S.C. §103(a) over Vu et al. (U.S. Patent No. 5,725,846).

VII. GROUPING OF CLAIMS

All claims stand or fall together.

VIII. APPELLANTS' ARGUMENTS

I. Claims 2, 3, 5-10 And 12-24 Are Not Obvious Over Vu et al.

Claims 2, 3, 5-10, and 12-24 were rejected under 35 USC §103(a) as being unpatentable over Vu et al. (hereinafter "Vu").

Vu discloses that any chelator may preferably be added to a gel stick of the Vu invention to improve color and clarity (Vu, column 5, lines 8-9). Examples of chelating agents are given: EDTA, Na₃EDTA, Na₄EDTA, HEDTA, DTPA, NTA, EDG, DEG, and PDTA. Na₃EDTA and Na₄EDTA are said to be preferred.

The present invention is to a simple product comprising an AP active and a 'micro-molar active iron (III) chelator'. Applicant has unexpectedly found that particular chelators (i.e. those which are micro-molar active) give a very anti-microbial effect in an antiperspirant composition. Micro-molar active iron (III) chelators are defined in the specification as chelators that "are able to significantly inhibit the growth of a relevant micro-organism when present, in a medium containing said micro-organism, at a concentration of 3×10^{-6} mol.dm⁻³ or less" wherein "inhibition is consider significant when growth of the relevant micro-organism on a supporting medium can be reduced by at least 30%" (see page 8, lines 19 to page 9, line 2 of the specification). Examples, without limitation, of such chelators that satisfy these criteria for being a "micro-molar active" are exemplified in Table 2 on page 28 of the specification. From Table 2, it can be seen that micro-molar active chelators include DTPA and TTHA, but exclude EDTA and CDTA.


Thus, the present application represents a novel and unobvious invention over Vu, which merely discloses that any chelator may be used to improve color and clarity, preferred ones being salts of EDTA (i.e. not a micro-molar active iron (III) chelator). Vu does not contemplate micro-molar active chelators synergistic enhancement of the anti-microbial performance of the antiperspirant salt. Applicant has unexpectedly found that antiperspirant salts together with particular chelators (i.e. ones that are micro-molar active) give a very anti-microbial effect. There is a certain synergy that is surprising when

one considers that antiperspirant salts are cationic and chelators are anionic. One would expect complexation and a loss of performance (see page 6, lines 10-14 of the specification). Accordingly, applicant has identified particular chelators (i.e. those that are 'micro-molar active') that have this property. Vu does not disclose or teach that the use of these particular chelators in antiperspirant compositions provides enhance efficacy. This benefit could not have been predicted from Vu , where chelating agents in general were used to attain a different benefit (color and clarity) (see Vu, column 5, lines 8-9). Applicant has not merely found a range that provided unexpected results but actual components in an antiperspirant product that provide unexpected results in the form of enhanced anti-microbial performance. Consequently, it is respectfully requested that the rejection over Vu be reconsidered and withdrawn.

IX. CONCLUSION

Appellants respectfully request the Board of Patent Appeals and Interferences to reverse the Examiner's final rejection.

Respectfully submitted,



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APPENDIX OF CLAIMS (37 C.F.R.. 1.192(c)(9))

Claims on Appeal

2. An anti-microbial product comprising an antiperspirant active and an iron (III) chelator, wherein the iron (III) chelator is a micro-molar active anti-microbial agent.
3. An anti-microbial product according to claim 2, wherein the antiperspirant active and the iron (III) chelator are both present in the same composition.
5. An anti-microbial product according to claim 2, having a hardness such that the pressure required to penetrate the composition is less than 0.06 N.mm^{-2} .
6. An anti-microbial product according to claim 2, comprising an aerosol composition.
7. An anti-microbial product according to claim 2, wherein the antiperspirant active is an aluminium, zirconium, or mixed aluminium/zirconium salt.
8. (An anti-microbial product according to claim 6, wherein an aluminium halohydrate is a component of the aerosol composition.
9. An anti-microbial composition according to claim 3, wherein the antiperspirant active is an aluminium halohydrate.
10. An anti-microbial product according to claim 2, wherein the iron (III) chelator has a binding coefficient for iron (III) or greater than 10^{26} .
12. An anti-microbial product according to claim 2, wherein the iron (III) chelator has an acid form comprising at least five acid groups.

13. An anti-microbial product according to claim 2, wherein the iron (III) chelator is a polyaminocarboxylic acid or salt thereof.
14. An anti-microbial product according to claim 13, wherein the iron (III) chelator has the acid form diethylenetriaminepentaacetic acid triethylenetetraaminehexaacetic acid, or ethylenebis {2-(2-hydroxyphenyl) glycine}.
15. An anti-microbial product according to claim 2, comprising an additional organic anti-microbial agent.
16. An anti-microbial product according to claim 15, comprising a polyhexamethylene biguanide salt, triclosan, or farnesol.
17. An anti-microbial product according to claim 2, comprising fragrance material at up to 4% by weight of the composition.
18. A method of controlling microbial numbers, said method comprising the application to a substrate of a product according to claim 2.
19. A cosmetic method of reducing perspiration and providing additional control of bacterial numbers on a human body surface, said method comprising the topical application to the human body of any of the products according to claim 2.
20. A cosmetic method according to claim 19, resulting in reduced body odour.
21. A cosmetic method of delivering enhanced fragrance intensity comprising the topical application to the surface of the human body of a composition according to claim 17.
22. A method for the manufacture of an anti-microbial composition comprising the mixing of an antiperspirant active, a transition metal chelator, and a carrier fluid.

23. An anti-microbial product according to claim 14, wherein the iron (III) chelator is diethylenetriaminepentaacetic acid or a salt thereof.
24. An anti-microbial product according to claim 2, comprising a wash-off agent.